

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR APPOINTMENT OF RECEIVERS; DEFINING TERMS; MAKING UNAPPROVED SECURITIES VOIDABLE; CHANGING CERTAIN HEARING REQUIREMENTS; CHANGING DUE DATES FOR CERTAIN FEES; PROVIDING FOR SYSTEM RELIABILITY REQUIREMENTS; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Utility Act is enacted to read:

"APPOINTMENT OF RECEIVER.--Whenever the commission determines, after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or consistently violates the rules or orders of the commission, the commission may commence an action in the district court of the county where the utility has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon terms and conditions in accordance with the provisions of the Public Utility Act, commission rules and orders of the court. Upon the order of the court, the receiver may issue receiver's certificates to provide funds to operate, repair, improve or enlarge the public

1 utility. Unless otherwise provided in the court order,
2 payment of the receiver's certificates is a first lien on the
3 real and personal property of the public utility. The court
4 shall prescribe the certificate's form, term and rate of
5 interest. Receiver's certificates are exempt from the
6 operation of any law that regulates the issuance or sale of
7 securities of public utilities."

8 Section 2. Section 62-3-3 NMSA 1978 (being Laws 1967,
9 Chapter 96, Section 3, as amended) is amended to read:

10 "62-3-3. DEFINITIONS.--Unless otherwise specified, when
11 used in the Public Utility Act:

12 A. "affiliated interest" means a person who
13 directly or indirectly, through one or more intermediaries,
14 controls or is controlled by or is under common control with
15 a public utility. Control includes instances where a person:

16 (1) is an officer, director, partner,
17 trustee or person of similar status or function;

18 (2) owns directly or indirectly or has a
19 beneficial interest in ten percent or more of voting
20 securities of a person;

21 (3) a level of ownership of securities other
22 than voting securities that the commission establishes as
23 creating a presumption of control; and

24 (4) instances where the possession of the
25 power to direct or cause the direction of the management and

1 policies of a person exists in fact, notwithstanding the lack
2 of ownership of ten percent or more of the person's voting
3 securities;

4 B. "commission" means the public regulation
5 commission;

6 C. "commissioner" means a member of the
7 commission;

8 D. "municipality" means a municipal corporation
9 organized under the laws of the state, and H-class counties;

10 E. "person" means an individual, firm,
11 partnership, company, rural electric cooperative organized
12 under Laws 1937, Chapter 100 or the Rural Electric
13 Cooperative Act, corporation or lessee, trustee or receiver
14 appointed by any court. "Person" does not mean a class A
15 county as described in Section 4-36-10 NMSA 1978 or a class B
16 county as described in Section 4-36-8 NMSA 1978. "Person"
17 does not mean a municipality as defined in this section
18 unless the municipality has elected to come within the terms
19 of the Public Utility Act as provided in Section 62-6-5 NMSA
20 1978. In the absence of voluntary election by a municipality
21 to come within the provisions of the Public Utility Act, the
22 municipality shall be expressly excluded from the operation
23 of that act and from the operation of all its provisions, and
24 no such municipality shall for any purpose be considered a
25 public utility;

1 F. "securities" means stock, stock certificates,
2 bonds, notes, debentures, mortgages or deeds of trust or
3 similar evidences of indebtedness issued, executed or assumed
4 by a utility;

5 G. "public utility" or "utility" means every
6 person not engaged solely in interstate business and, except
7 as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may
8 own, operate, lease or control:

9 (1) any plant, property or facility for the
10 generation, transmission or distribution, sale or furnishing
11 to or for the public of electricity for light, heat or power
12 or other uses;

13 (2) any plant, property or facility for the
14 manufacture, storage, distribution, sale or furnishing to or
15 for the public of natural or manufactured gas or mixed or
16 liquefied petroleum gas for light, heat or power or other
17 uses; but the term "public utility" or "utility" shall not
18 include any plant, property or facility used for or in
19 connection with the business of the manufacture, storage,
20 distribution, sale or furnishing of liquefied petroleum gas
21 in enclosed containers or tank truck for use by others than
22 consumers who receive their supply through any pipeline
23 system operating under municipal authority or franchise and
24 distributing to the public;

25 (3) any plant, property or facility for the

1 supplying, storage, distribution or furnishing to or for the
2 public of water for manufacturing, municipal, domestic or
3 other uses; provided, however, that nothing contained in this
4 paragraph shall be construed to apply to irrigation systems,
5 the chief or principal business of which is to supply water
6 for the purpose of irrigation;

7 (4) any plant, property or facility for the
8 production, transmission, conveyance, delivery or furnishing
9 to or for the public of steam for heat or power or other
10 uses; or

11 (5) any plant, property or facility for the
12 supplying and furnishing to or for the public of sanitary
13 sewers for transmission and disposal of sewage produced by
14 manufacturing, municipal, domestic or other uses; provided
15 that the terms "public utility" or "utility" as used in the
16 Public Utility Act do not include any utility owned or
17 operated by a class A county as described in Section 4-36-10
18 NMSA 1978 either directly or through a corporation owned by
19 or under contract with such a county;

20 H. "rate" means every rate, tariff, charge or
21 other compensation for utility service rendered or to be
22 rendered by a utility and every rule, regulation, practice,
23 act, requirement or privilege in any way relating to such
24 rate, tariff, charge or other compensation and any schedule
25 or tariff or part of a schedule or tariff thereof;

1 I. "renewable energy" means electrical energy
2 generated by means of a low- or zero-emission generation
3 technology that has substantial long-term production
4 potential and may include, without limitation, the following
5 energy sources: solar, wind, hydropower, geothermal,
6 landfill gas, anaerobically digested waste biomass or fuel
7 cells that are not fossil fueled. "Renewable energy" does
8 not include fossil fuel or nuclear energy;

9 J. "service" or "service regulation" means every
10 rule, regulation, practice, act or requirement relating to
11 the service or facility of a utility;

12 K. "Class I transaction" means the sale, lease or
13 provision of real property, water rights or other goods or
14 services by an affiliated interest to a public utility with
15 which it is affiliated or by a public utility to its
16 affiliated interest;

17 L. "Class II transaction" means:

18 (1) the formation after May 19, 1982 of a
19 corporate subsidiary by a public utility or a public utility
20 holding company by a public utility or its affiliated
21 interest;

22 (2) the direct acquisition of the voting
23 securities or other direct ownership interests of a person by
24 a public utility if such acquisition would make the utility
25 the owner of ten percent or more of the voting securities or

1 other direct ownership interests of that person;

2 (3) the agreement by a public utility to
3 purchase securities or other ownership interest of a person
4 other than a nonprofit corporation, contribute additional
5 equity to, acquire additional equity interest in or pay or
6 guarantee any bonds, notes, debentures, deeds of trust or
7 other evidence of indebtedness of any such person; provided,
8 however, that a public utility may honor all agreements
9 entered into by such utility prior to May 19, 1982; or

10 (4) the divestiture by a public utility of
11 any affiliated interest that is a corporate subsidiary of the
12 public utility;

13 M. "corporate subsidiary" means any person ten
14 percent or more of whose voting securities or other ownership
15 interests are directly owned by a public utility;

16 N. "public utility holding company" means an
17 affiliated interest that controls a public utility through
18 the direct or indirect ownership of voting securities of that
19 public utility; and

20 O. "voting securities" means securities that carry
21 the present right to vote for the election of directors or
22 other members of the governing body ultimately responsible
23 for the management of the organization."

24 Section 3. Section 62-6-11 NMSA 1978 (being Laws 1941,
25 Chapter 84, Section 23, as amended) is amended to read:

1 "62-6-11. SECURITIES VOIDABLE UNLESS APPROVED.--All
2 securities issued, assumed or guaranteed without application
3 to and approval of the commission, except the securities
4 mentioned in Sections 62-6-8 and 62-6-8.1 NMSA 1978, are
5 voidable with the consent of the commission."

6 Section 4. Section 62-8-7.1 NMSA 1978 (being Laws 1985,
7 Chapter 221, Section 3, as amended) is amended to read:

8 "62-8-7.1. HEARING PROCEDURES FOR CHANGE OF RATES OF
9 SMALL WATER AND SEWER UTILITIES.--

10 A. Whenever there is filed with the commission any
11 schedule proposing any new rates pursuant to Section 62-8-7
12 NMSA 1978 by any public utility as defined in Paragraph (3)
13 or (5) of Subsection G of Section 62-3-3 NMSA 1978 with equal
14 to or fewer than an aggregate of one thousand five hundred
15 service connections in any utility operating district or
16 division in New Mexico averaged over the previous three
17 consecutive years, the rates shall become effective as
18 proposed by the utility without a hearing; provided that the
19 utility shall be required to give written notice of the
20 proposed rates to the ratepayers receiving service from the
21 utility at least sixty days prior to filing the proposed rate
22 change with the commission; and provided further that the
23 commission shall enter upon a hearing concerning the
24 reasonableness of any proposed rates filed by such a utility
25 pursuant to Subsections C and D of Section 62-8-7 NMSA 1978

1 when a rate increase would have the effect of increasing the
2 rates fifty percent or more in a twelve-month period or upon
3 the filing with the commission of a protest seeking review of
4 the proposed rates signed by ten percent or more of the
5 ratepayers or twenty-five ratepayers, whichever is more,
6 receiving service from such a utility if the commission
7 determines there is just cause for reviewing the proposed
8 rates. For purposes of this section, a "service connection"
9 means a metered hookup to the utility's water system or a
10 sewer tap to the utility's wastewater system, and each person
11 who receives a separate bill equals one ratepayer and each
12 person who receives multiple bills equals one ratepayer. The
13 petition shall be signed by the person in whose name service
14 is carried. The petition shall be filed no later than twenty
15 days after the filing with the commission of the schedule
16 proposing the new rates. In all other respects, Section
17 62-8-7 NMSA 1978 shall apply to such water utilities. If a
18 utility provides both water and sewer service, the service
19 connection revenues attributable to the provision of water
20 service only shall determine whether the procedures specified
21 in this subsection shall apply to a schedule proposing new
22 rates for water service, and the service connection revenues
23 attributable to the provision of sewer service shall
24 determine whether the procedures specified in this subsection
25 shall apply to a schedule proposing new rates for sewer

1 service. Nothing in this subsection shall prevent a utility
2 from filing for a rate change pursuant to any other rule or
3 procedure of the commission.

4 B. Whenever there is filed with the commission a
5 schedule proposing new rates pursuant to Section 62-8-7 NMSA
6 1978 by a public utility as defined in Paragraph (3) or (5)
7 of Subsection G of Section 62-3-3 NMSA 1978, with more than
8 an aggregate of one thousand five hundred service connections
9 and fewer than an aggregate of five thousand service
10 connections in any utility operating district or division in
11 New Mexico averaged over the previous three consecutive
12 years, the rates shall become effective as proposed by the
13 public utility without a hearing; provided that the public
14 utility shall be required to give written notice of the
15 proposed rates to the ratepayers receiving service from the
16 public utility at least sixty days prior to filing the
17 proposed rate change with the commission; and provided
18 further that the commission shall enter upon a hearing
19 concerning the reasonableness of proposed rates filed by such
20 a public utility pursuant to Subsections C and D of Section
21 62-8-7 NMSA 1978 when a rate increase would have the effect
22 of increasing rates more than eight percent in a twelve-month
23 period, or upon the commission staff's motion or upon the
24 filing with the commission of a protest seeking review of the
25 proposed rates signed by ten percent or more of the

1 ratepayers receiving service from the public utility, if the
2 commission determines there is just cause for reviewing the
3 proposed rates. The petition shall be signed by the person
4 in whose name service is carried. The petition shall be filed
5 no later than twenty days after the filing with the
6 commission of the schedule proposing the new rates. In all
7 other respects, Section 62-8-7 NMSA 1978 shall apply to such
8 water utilities. If a public utility provides both water and
9 sewer service, the service connection revenues attributable
10 to the provision of water service only shall determine
11 whether the procedure specified in this subsection shall
12 apply to a schedule proposing new rates for water service,
13 and the service connection revenues attributable to the
14 provision of sewer service shall determine whether the
15 procedures specified in this subsection shall apply to a
16 schedule proposing new rates for sewer service. Nothing in
17 this subsection shall prevent a public utility from filing
18 for a rate change pursuant to any other rule or procedure of
19 the commission.

20 C. Notwithstanding the provisions of Subsections A
21 and B of this section, a public utility as defined in
22 Paragraph (3) or (5) of Subsection G of Section 62-3-3 NMSA
23 1978, with fewer than an aggregate of five thousand service
24 connections in any utility operating district or division in
25 New Mexico averaged over the previous three consecutive

1 years, that is currently in good standing with all applicable
2 requirements of the commission, may adjust its charges for
3 commodity and service by up to two percent in any calendar
4 year without a hearing; provided that the public utility
5 shall not have changed its rates in the prior twelve-month
6 period; and provided further that the public utility shall be
7 required to give written notice of the proposed rate
8 adjustments to the ratepayers receiving service from the
9 public utility prior to its effective date. The increased
10 rates shall not become effective until at least thirty days
11 after notice and filing with the commission. If a public
12 utility provides both water and sewer service, the service
13 connection revenues attributable to the provision of water
14 service only shall determine whether the procedure specified
15 in this subsection shall apply to any schedule proposing any
16 new rate or rates for water service, and the service
17 connection revenues attributable to the provision of sewer
18 service shall determine whether the procedures specified in
19 this subsection shall apply to any schedule proposing any new
20 rate or rates for sewer service. Nothing in this subsection
21 shall prevent a public utility from filing for a rate change
22 pursuant to any other rule or procedure of the commission."

23 Section 5. Section 62-8-8 NMSA 1978 (being Laws 1967,
24 Chapter 96, Section 6, as amended) is amended to read:

25 "62-8-8. INSPECTION AND SUPERVISION FEE.--Each utility

1 doing business in this state and subject to the control and
2 jurisdiction of the commission with respect to its rates or
3 service regulations shall pay annually to the state a fee for
4 the inspection and supervision of such business in an amount
5 equal to five hundred six thousandths percent of its gross
6 receipts from business transacted in New Mexico for the
7 preceding calendar year. That sum shall be payable on or
8 before the first day of April in each year. An inspection
9 and supervision fee shall be paid by utilities in addition to
10 all property, franchise, license, intangible and other taxes,
11 fees and charges provided by law. No similar inspection and
12 supervision fee shall be measured by the amount of the gross
13 receipts of such utility for the calendar year next preceding
14 the date fixed in this section for the payment of the fee.
15 In the case of utilities engaged in interstate business, the
16 inspection and supervision fee shall be measured by the gross
17 receipts of those utilities from intrastate business only for
18 that preceding calendar year and not in any respect upon
19 receipts derived wholly or in part from interstate business.
20 No inspection and supervision fee shall be charged on the
21 gross receipts from the sale of gas, water or electricity to
22 a utility regulated by the commission for resale to the
23 public."

24 Section 6. Section 62-9-3 NMSA 1978 (being Laws 1971,
25 Chapter 248, Section 1, as amended) is amended to read:

1 "62-9-3. LOCATION CONTROL--LIMITATIONS.--

2 A. The legislature finds that it is in the public
3 interest to consider any adverse effect upon the environment
4 and upon the quality of life of the people of the state that
5 may occur due to plants, facilities and transmission lines
6 needed to supply present and future electrical services. It
7 is recognized that such plants, facilities and transmission
8 lines will be needed to meet growing demands for electric
9 services and cannot be built without in some way affecting
10 the physical environment where these plants, facilities and
11 transmission lines are located. The legislature therefore
12 declares that it is the purpose of this section to provide
13 for the supervision and control by the commission of the
14 location within this state of new plants, facilities and
15 transmission lines for the generation and transmission of
16 electricity for sale to the public.

17 B. A person, including any municipality, shall not
18 begin the construction of any plant designed for or capable
19 of operation at a capacity of three hundred thousand
20 kilowatts or more for the generation of electricity for sale
21 to the public within or without this state, whether or not
22 owned or operated by a person that is a public utility
23 subject to regulation by the commission, or of transmission
24 lines in connection with such a plant, on a location within
25 this state unless the location has been approved by the

1 commission. For the purposes of this section, "transmission
2 line" means any electric transmission line and associated
3 facilities designed for or capable of operations at a nominal
4 voltage of two hundred thirty kilovolts or more, to be
5 constructed in connection with and to transmit electricity
6 from a new plant for which approval is required.

7 C. Application for approval shall contain all
8 information required by the commission to make its
9 determination, be made in writing setting forth the facts
10 involved and be filed with the commission. The commission
11 shall, after a public hearing and upon notice as the
12 commission may prescribe, act upon the application. The
13 commission may condition its approval upon a demonstration by
14 the applicant that it has received all necessary air and
15 water quality permits.

16 D. Approval shall not be required for construction
17 in progress on the effective date of this section or for
18 additions to or modifications of an existing plant or
19 transmission line.

20 E. The commission shall approve the application
21 for the location of the generating plant unless the
22 commission finds that the operations of the facilities for
23 which approval is sought will not be in compliance with all
24 applicable air and water pollution control standards and
25 regulations existing or will unduly impair system

1 reliability. The commission shall not require compliance
2 with performance standards other than those established by
3 the agency of this state having jurisdiction over a
4 particular pollution source.

5 F. The commission shall approve the application
6 for the location of the transmission lines unless the
7 commission finds that the location will unduly impair
8 important environmental values or the operation of the
9 proposed transmission lines will unduly impair power system
10 reliability.

11 G. An application shall not be approved pursuant
12 to this section if it violates an existing state, county or
13 municipal land use statutory or administrative regulation
14 unless the commission finds that the regulation is
15 unreasonably restrictive and compliance with the regulation
16 is not in the interest of the public convenience and
17 necessity, in which event and to the extent found by the
18 commission the regulation shall be inapplicable and void as
19 to the siting. When it becomes apparent to the commission
20 that an issue exists with respect to whether a regulation is
21 unreasonably restrictive and compliance with the regulation
22 is not in the interest of public convenience and necessity,
23 it shall promptly serve notice of that fact by certified mail
24 upon the agency, board or commission having jurisdiction for
25 land use of the area affected and shall make the agency,

1 board or commission a party to the proceedings upon its
2 request and shall give it an opportunity to respond to the
3 issue. The judgment of the commission shall be conclusive on
4 all questions of siting, land use, aesthetics and any other
5 state or local requirements affecting the siting.

6 H. Nothing in this section shall be deemed to
7 confer upon the commission power or jurisdiction to regulate
8 or supervise any person, including a municipality, that is
9 not otherwise a public utility regulated and supervised by
10 the commission, with respect to its rates and service and
11 with respect to its securities, nor shall any other provision
12 of the Public Utility Act be applicable with respect to such
13 a person, including a municipality.

14 I. The commission shall issue its order granting
15 or denying the application within six months from the date
16 the application is filed with the commission. Failure to
17 issue its order within six months is deemed to be approval of
18 the application; provided, however, that the commission may
19 extend the time for granting approval for a transmission line
20 that is subject to this section for an additional ten months
21 upon finding that the additional time is necessary to
22 determine if the proposed location of the line will unduly
23 impair important environmental values."

24 Section 7. Section 63-7-20 NMSA 1978 (being Laws 1951,
25 Chapter 194, Section 1, as amended) is amended to read:

1 "63-7-20. UTILITY AND CARRIER INSPECTION--FEE.--

2 A. Each utility and carrier doing business in this
3 state which is subject to the control and jurisdiction of the
4 commission by virtue of the provisions of Article 11 of the
5 constitution of New Mexico with respect to its rates and
6 service shall pay annually to the commission a fee in
7 performance of its duties as now provided by law. The fee
8 for carriers shall not exceed two hundred fifty-six
9 thousandths percent of its gross receipts from business
10 transacted in New Mexico for the preceding calendar year.
11 The fee for utilities shall not exceed five hundred eleven
12 thousandths percent of its gross receipts from business
13 transacted in New Mexico for the preceding calendar year.
14 This sum shall be payable annually on or before April 1 in
15 each year. No similar fee shall be imposed upon the utility
16 or carrier. In the case of utilities or carriers engaged in
17 interstate business, the fees shall be measured by the gross
18 receipts of the utilities or carriers from intrastate
19 business only for the preceding calendar year and not in any
20 respect upon receipts derived wholly or in part from
21 interstate business. As used in this section, "utility"
22 includes telephone companies and transmission companies but
23 does not include public utilities subject to the Public
24 Utility Act.

25 B. When a fee is not paid on the date it is due,

1 interest shall be paid to the state on the amount due. The
2 interest on the amount due shall start to accrue on the day
3 following the due date and shall continue to accrue until the
4 total amount due is paid. The rate of interest on a late fee
5 payment shall be fifteen percent per year, computed at the
6 rate of one and one-fourth percent per month.

7 C. In addition to any interest due on a late fee
8 payment, a penalty shall be paid to the state for failure to
9 pay the fee when it is due. The penalty imposed shall be two
10 percent of the amount of the fee due.

11 D. The attorney general, in the name of the state,
12 shall bring suit to collect fees, interest and penalties that
13 remain unpaid."

14 Section 8. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2005. _____

16
17
18
19
20
21
22
23
24
25